

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-320

DAVID R. OLOFSON,

Defendant.

**DEFENDANT'S MOTION TO SUPPRESS STATEMENT AND FRUITS
DERIVED THEREFROM AND REQUEST
FOR EVIDENTIARY HEARING**

David R. Olofson, by counsel, asks this Court to suppress the statement he provided law enforcement on July 19, 2006, and any fruits derived from that statement. Olofson also asks for an evidentiary hearing on this issue.

The facts are as follows. On July 19, ATF agents and the Berlin Police Department executed a search warrant at Olofson's residence in Berlin. While the search warrant was executed, Olofson was transferred to the Berlin Police Department and gave a statement. He was not advised of his *Miranda* rights before he made the statement. Law enforcement states that Olofson was told he was not under arrest and that he was free to leave. Olofson states that he was told he could not leave the police station until the search concluded. Olofson's statements could

be considered incriminating because he expressed a familiarity with how to transform a semi-automatic firearm into a "machine gun." Olfson is charged with transferring a "machine gun."

Olfson requests an evidentiary hearing with respect to this motion to suppress. Pursuant to CRIMINAL LOCAL RULE 12.3, defense counsel contacted the government regarding the need for an evidentiary hearing. The government agrees that a hearing is needed to determine the following mixed factual and legal dispute:

1. Whether Olfson was subjected to "custodial interrogation" when he made the statement to law enforcement on July 19, 2006.

Defense counsel estimates that an evidentiary hearing will consume no more than one to two hours of the Court's time. Pursuant to CRIMINAL LOCAL RULE 12.2, no supporting memorandum of law will be filed at this time. Olfson, however, reserves the right to file a memorandum of law following the evidentiary hearing. This motion supersedes his "Fifth Motion to Suppress Evidence and Allow Late Filing," which was filed on March 13, 2007.

Dated at Milwaukee, Wisconsin, April 12, 2007.

Respectfully submitted,

/s/ Brian P. Mullins

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